

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
SINGLE MEMBER APPEAL BRANCH

Appeal No. E/1373- 1374 /2006 -SM [BR]

Date 06/02/2008

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
1-2) M/S BANSWARA TEXTILE MILLS LTD.
INDL AREA DOOHAD ROAD, BANSWARA(RAJ)

M/S BANSWARA TEXTILE MILLS LTD.

CCE, JAIPUR-II


Appellant
Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No.258- 259 /2008-SM[BR] dated 9.1.2008
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
CCE, JAIPUR-II
NCRB C SCHEME, JAIPUR-II
2. Adv. / Consult
MR.K.K ANAND
A-5, BASEMENT, LAJPAT NAGAR-III NEW DELHI-24
3. S.D.R.
4. ~~J.C.D.R.~~
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, marg, 43, saket, New
7. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301
9. R.Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,
12. Co, Law Institution
13. TAX INDIA, B-XI/8183, Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file


Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

E/Appeal No.1373-1374/2006-SM

(Arising out of order in appeal No.62-63/HKS/CE/JPR.II/2006 dated
17.1.2006 passed by the Commissioner (Appeals), Customs & Central
Excise, Jaipur)

For approval and signature:

Hon'ble Mr.P.K. Das, Member(Judicial))

1. Whether Press reporters may be allowed to see the order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not ?
3. Whether Their Lordships wish to see the fair copy of the Order ?
4. Whether Order is to be circulated to the Departmental authorities?

M/s Banswara Textile Mills Ltd Appellant
(Rep. by Shri K.K. Anand, Advocate)

Vs

CCE, Jaipur-II Respondent
(Rep. by Shri S. Gautam, DR)

Coram: Hon'ble Mr P.K. Das, Member(Judicial)

Date of Hearing: 9.1.2007

Final Order No. 258-259/08-SM (BR)

Per P.K. Das:

The learned Advocate for the appellants submits that both the appeals are arising out of remand orders of the Tribunal. He submits that by Final

Order dated 23rd February, 2005, the Division Bench of the Tribunal ~~respect~~ remanded the matter to the Commissioner (Appeals) to examine the Order in Original dated 21st November, 2001, as to while sanctioning the refund amount of duty, adjudicating authority rejected the amount of Rs.3,84,102/- as demanded herein. He submits that the Commissioner (Appeals) while passing the impugned order, had not examined the adjudicating^{Sy} order dated 21st November, 2001. In this connection, he drew the attention of the Bench at para 4 of the Order in Original dated 21st November, 2001 wherein it has been observed that the appellant availed excess deemed credit to the extent of Rs. 3,81,102/-. He further submits that the said amount was deducted from the refund claim by Order in Original dated 21st November, 2001. With regard to demand of duty of Rs. 49,352/-, he submits that the Commissioner (Appeals) passed the order without following the direction of the remand order dated 26th July, 2005 of the Tribunal.

2. The learned DR reiterates the finding of the Commissioner (Appeals).

3. After hearing both the sides and perusal of the record, I find that the Commissioner (Appeals) observed that in the Order in Original dated 21st November, 2001, the adjudicating authority did not allow the refund in cash in respect of the impugned deemed credit. It appears from the Order in Original dated 21.11.2001 that the said amount was deducted by the adjudicating authority from the refund claim. However, there is no such finding of the Commissioner (Appeals) in the impugned order. So the Order in Original dated 21st November, 2001 and the present demand of duty are required to be examined. Accordingly, both the impugned orders are set aside and the matters remanded to the Commissioner (Appeals) to examine

the demand of duty with the finding of the adjudicating authority in adjudication order dated 21st November, 2001. Both the appeals are allowed by way of remand.

(Order dictated and pronounced in the open Court).

MPS*

(P.K. Das)
Member(Judicial)